# Security ACP

NOTE

A lot of affs on this topic argued that valuing truth-seeking over the attorney-client privilege would decrease crime. This kritik argued that restricting rights in order to stop crime is a dangerous sort of thinking, and justifies presuming people to be guilty rather than innocent, justifying violence.

## 1NC

### Shell

#### The quest for truth-seeking at the expense of rights in the CJS results in securitization that paints all of society as guilty

Williams 13 [(Jason Michael, activist scholar, B.S and M.S in Criminal Justice from New Jersey City University, PhD in Administration of Justice from Texas Southern University, has presented at a number of academic conferences, teaches at Farleigh Dickinson University) “The National Securitization of Traditional Criminal Justice” I Criminal Justice, Analysis, June 27th, 2013] AT

In the post-911 era, traditional criminal justice processes have become nearly ancient. For example, according to some scholars within criminology/criminal justice, the administration of justice presently finds itself at a strange crossroad (Wacquant, 2009; Garland, 2001; Braithewaite, 2000; Simon, 2007). This crossroad has been linked to several paradigmatic shifts that have been occurring within the crime control complex that has governed the administration of justice since the 1980s. Some believe this shift is the consequence of late modernity (Garland, 2001; Monahan, 2006) and others blame neo-liberalism (Brown, 2010), and the changing currents within the social, political, and cultural contexts. Birthed from this discourse are crimes of late modernity. These crimes consist of terrorism, cyber- crime, and other crimes categorized under the umbrella of national security. What is of essential importance is the context in which the mechanisms of punishment and crime control has changed. For example, traditionally, rights afforded to U.S. citizens via the Constitution were off limits and could never be challenged or taken away under any circumstances; however, today, because of various laws and powers of the Executive Branch of government, U.S. citizens are at a greater risk of being punished and surveilled by the government. A good indicator of this reality is the current debates on the Obama Administration and the National Security Administration's (NSA) spying program. The ACLU has taken measures to combat the intrusive qualities of the NSA's spying program. According to the ACLU, the U.S. government does not seem to have a concrete purpose for collecting data on its citizens; it simply alleges that, by doing so, it makes it easier for intelligence officials to identify trends and possible leads later. This shifting in the administration of justice implicates a minority report-effect wherein law enforcement has become involved in the business of preemptive-law enforcement. This shift is a process whereby the government investigates to prevent crime but under a dogmatic notion that everyone is possibly guilty before committing the crime. This logic is abundantly counterproductive to the usual processes of law enforcement. However, the biggest question regarding this discourse is why this is happening and what are some critical elements that may need to be contextualized for a better understanding on what is occurring. In the post-911 era, the crime control model of administering justice has been placed on steroids. Packer (1968) describes the crime control model as a process in which justice is swift and based on just deserts. There is very little room for improvement of the individual under this model, for justice is at best an assembly line and crime is never-ending and unfixable. The crime control model operates off the presumption of guilt, which is congruent to the way in which the system operates today under preemptive-law enforcement. Large quantities of cases are brought into adjudication and convicts are swiftly assigned punishment. In fact, many cases are never brought to court due to the continuous movement of the system and the large amounts of persons being charged daily. According to the Bureau of Justice Assistance, 90-95% of defendants on both the federal and state levels never reach the trail stage due to plea bargains, which have more striking cons to them than pros. Timothy Lynch of the CATO Institute has written a compelling article that focused on government's response to one's option/right to a trial by jury, thus alleging that government retaliates against those defendants who are apathetic to pleas. On the other hand, Packer describes the due process model as a more egalitarian approach to administering justice. Under this model, the humanity of the victim and perpetrator is recognized, and there is no loss of Constitutional rights for either side. The due process model understands that error can occur within the fact-finding process and makes strides toward making sure that such errors are avoided and considered; thus, it tries to maintain the integrity of justice. However, the impact that all the above has on modern day criminal justice is one of the most important questions that must be answered. Since 911, social control has become more punitive. Government can now surveil people in ways never done before. Techno-surveillance has become a very attractive tool in modern-day spying. More strikingly, state and local law enforcement agencies are starting to impersonate federal protocol. For example, many states now have counter-terrorism units, cyber-crime units, and departments of homeland security and emergency management. These advents are indicative of a dual police state (federal and state), or a system in which surveillance reigns supreme 24/7 and within all spaces of governance.

#### The impact is global war and extermination

Mamon 12 [(The Campaign against Criminalising Communities (CAMPACC) in association with the Haldane Society of Socialist Lawyers, European Association of Lawyers for Democracy & World Human Rights (EDLH), the Newham Monitoring Project (NMP), the Network for Police Monitoring (Netpol), G4S Campaign and CagePrisoners); “Securitisation as a Political Strategy: Creating Insecurity, suppressing Dissent” Backdoor Broadcasting, 11 July 2012] AT

‘Security Measures’ are becoming all-pervasive, supposedly to protect us from severe threats. In practice, such measures turn us into suspects – subjected to preventative measures such as state surveillance, restrictions on movement, extra-judicial powers, secret evidence and even punishment without trial. ‘Terrorism’ , ‘extremism’ and ‘ suspicious behavior’ are defined so broadly and vaguely as to entrap potentially anyone. Some measures target specific groups; for example, anti-terror powers target migrant diaspora and Muslim communities, as well as (increasingly) political activists. Organised as mass-media spectacles, anti-terror raids label individuals and entire groups as terror suspects. For the past decade, secret evidence has been systematically used to label and detain foreigners as ‘terror suspects’; more recently, secret evidence has been extended to other procedures, likewise in the name of national security. Curfews and dispersal orders target youth, labeling normal social activities as dangerous. Israel’s occupation of Palestine has served as a laboratory for many surveillance and control techniques designed for global export. These are being adapted for ‘security measures’ at airports and mega-events such as the Olympics. In the run-up to the London Olympics, military equipment is being deployed to build public fear, justifying a quasi-military occupation on behalf of multinational companies. Israeli checkpoints have been spreading: when Palestinian activists planned protests against Israel’s Habima Treatre performance in London in May, the Shakespeare Globe Theatre installed airport-style detectors to screen all ticket holders, as well as employing private ‘security guards’. The British-Danish company G4S has been quickly growing and gaining state-like powers in this country. It has been long involved in the Israeli occupation, e.g. by supplying equipment to Israeli prisons and ‘security services’ to businesses in illegal Israeli settlement. G4S has been designated as the ‘official provider of security and cash services for the Olympics’. In all these ways, securitisation is a political strategy for spreading fear and insecurity, while also suppressing dissent against neoliberal policies and war. It attempts to discipline us all through fear that our behavior will be treated as ‘extreme’ or ‘suspicious’. Societal conflicts are increasingly defined as ‘security problems’ warranting special measures – which thereby become normal. All these measures encourage suspicion towards each other, discouraging solidarity. We will ask the following questions: How is insecurity being defined and even created by the state? Who threatens whose security? What has been driving securitisation? How can this be undermined through solidarity among the groups being targeted?

#### Vote neg to endorse a new scholarship that starts security discussions in the community – this is where resistance to securitizing narratives occurs

Simon 2 [(Jonathan, Professor of Law at Berkeley, Director at Center for the Study of Law and Society) “Crime, Community, and Criminal Justice” California Law Review, Volume 90, Issue 5 Article 2 10-31-2002] AT

Perhaps the new scholarship on community and criminal justice, which the essays in this Colloquium represent a major contribution to, can begin a much-needed counter-discourse that will reinfuse community legal landscapes with a fuller set of social values than crime control, including equality, economic revitalization, and social solidarity. By its very position between individual actors and society as a whole, community complicates our dominant crime narratives. As Tracey Meares reminds us in her contribution to this volume, the space of community has long been a space for reimagining how law enforcement, community leaders, and others might act on and know crime in ways different than the traditional punitive criminal law."5 Shifting the practice of criminal-justice institutions and policies in ways that address community opportunities for crime control will require convincing new narratives for crime-control institutions themselves. 9 Three of the Essays here provide quite different directions for theorizing a community logic of criminal justice. In his contribution to this volume, Dan Kahan sets out to establish a theory of community policing that can compete with the dominant model of deterrence that has sustained traditional (and modem) surveillance oriented policing aimed at simply raising the likelihood of catching and convicting criminals.2" Crime is largely determined by solving collectiveaction problems embedded in the nature of all communities. On Kahan's account, community policing is best seen as a device for facilitating circuits of reciprocity that permit these problems to resolved without crime and often without harsh crime control. Anthony Alfieri and Kathryn Abrams each offer interpretations of community criminal justice practices that draw on contemporary critical theories of race and gender. For Alfieri, community prosecution offers a redemptive possibility that goes to the heart of one of the most disturbing features of governing through crime: the increasing racialization of crime.2' Traditional models of the prosecution function have provided little reason for prosecutors to consider the role of law in constructing racial meanings. Prosecution committed to controlling crime through enhancing community capacity for order definition and maintenance inevitably confronts the way race-making practices operate to facilitate and even mandate violence. Kathryn Abrams joins an argument about the purposes behind one of the most popular forms in which an idea of community is infusing criminal justice, that is, hate crimes.22 Earlier work by Kahan argued that punishments for hate crimes operate to turn around the social-meaning making of the criminals by imposing on them marks of degradation and producing disgust against them much as they sought to do to the victims.23 Abrams argues that fighting discrimination through using the emotional power of disgust to reassign meanings is ultimately risky to the creation of durable diverse communities. 4 Turning to the strategies of victims of hate crimes, she finds that groups that have organized for hate-crime legislation after long experience as victims reject the transfer-of-disgust model in favor of affirmative cultural programs aimed at confronting the ignorance that shelters enduring prejudices. For more than forty years now the federal government has played a major role in promoting crime as a primary concern for state and local govemments.' The reach and severity of federal crime-control measures reflect in part the distance between federal lawmakers and any actual communities. State legislatures, in contrast, are generally less punitive precisely because they are closer to the costs and collateral damages of crime control on the community. 6 Susan Klein explores the potential for federalism arguments to create more space for the kinds of less-punitive resolutions with which states are increasingly experimenting.27 Exploring arguments more frequently plumbed by conservatives, Klein suggests that the Tenth Amendment may limit the Commerce Clause even in areas clearly part of commerce where state law protects a minority value preference by recognizing an "independent-norm federalism" that would immunize certain behaviors legalized by state law from federal criminal law enforcement. While "agnostic" about whether such independent norms are desirable, Klein's work offers arguments for those who would seek to limit federal criminalization precisely to protect certain kinds of communities. There is certainly some risks on the road to community justice. In the short term it commits us to an ever-closer association with crime and its metaphors in seeking to solve other kinds of community problems. We may detect here subtle tones of surrender to the popular concern with crime. Economic decline, alienation, inequality can all get back into the discussion, but only by associating with the crime problem and its solution. 2 In the long term, however, these Essays also point to the potential to enrich the current logic of governing through crime by moving it away from the very narrow spectrum of ways of knowing and acting on crime enshrined in our current policies and practices. By searching for new logics of crime control to replace, or at least supplement, the now dominant logics of deterrence, incapacitation, and retribution, the new research on community justice opens up the range of what can count as crime-control strategies and begins to reverse the deflation of options for addressing destructive conduct that accompanies the war on crime. By identifying diverse sites of moral judgment and norm definition, including states, social movements, and churches, this scholarship challenges the tendency of traditional criminal law to constitute thin but totalizing claims of community protected by law. Finally, by asking how community members can participate in the construction of their own security, this scholarship counters the tendency of state criminal-justice agencies to exercise top-down power over passive subjects dependent on the state for managing risks.

### Link – Guilt/Retribution

#### Establishing who is guilty is a move to categorize deviants as threats

Schuilenburg [(Marc, teaches in the Department of Criminal Law and Criminology at Vriju University, Amsterdam) “The Securitization of Society: On the Rise of Quasi-Criminal Law and Selective Exclusion” Social Justice Vol. 38, Nos. 1–2] AT

Although it is extremely difficult to delineate the concepts of safety, security, and certainty in concrete cases, the combined use of these three concepts forms the core of what I would like to refer to as the “securitization of society.” By this I mean the increasing use in different milieus of society since the nineteenth century of a variety of techniques designed to manage the future or, to phrase it better, to ensure a safe and secure future. As a consequence, different areas are not only “defined” by sécurité as a form of power, security techniques are also more widely applied in our society. These techniques are distinct from the disciplinary techniques described by Foucault as the methods to transform individuals into productive, efficient, and obedient entities, and which were used in prisons, convents, schools, and workshops (1975: 139). The reason is that, because of their reflexive nature, these techniques point to the future, making it possible to “predict” and thus “prevent” events. This follows from well-known notions such as “actuarial justice” and “the new penology” (Feeley and Simon, 1992, 1994; Ericson and Haggerty, 1997), where the objective is no longer to facilitate a convicted perpetrator’s return to society through resocialization, but to identify and classify—and de facto “diffuse”—acts or conduct that could pose a threat to the social order. Feeley and Simon, in my estimation, grant too much autonomy in their analysis to the control systems of the national state, and they argue that actuarial justice has its roots in the twentieth-century extension of insurance-based risk calculations of probability (see also Simon, 1987; 1988). Insurance techniques are then used to generate reliable risk factors from aggregated data.4 Securitization, however, is a broader and more appropriate concept in this context, because the pursuit of safety and security is not limited to reducing the problem of criminality by the state, but has been extended from the very start to include a multitude of practices and environments, with its most remarkable point of reference being a medical model in which politics is intertwined with all kinds of “soft” measures from the health sphere.

### Link – Crime

#### The fear of crime drives a never-ending demand for security that expands the carceral state

Simon 2 [(Jonathan, Professor of Law at Berkeley, Director at Center for the Study of Law and Society) “Crime, Community, and Criminal Justice” California Law Review, Volume 90, Issue 5 Article 2 10-31-2002] AT

American communities have been transformed since the 1970s by two trends. The first is the growing influence of the fear of crime over basic life decisions. The second is the dramatic reduction in the informal social control produced by traditional families, ethnically and religiously defined neighborhoods, and the retraction of the industrial manufacturing economy with its demanding disciplinary socialization (reinforced by unions and other collateral social organizations). These problems have been so evident in poor communities that they have even produced a new term for poverty-" the underclass." These trends feed on each other. Declining levels of informal social control increase fear of crime (and crime itself).' The public's increasing fear of crime drives demands for higher levels of order and harsher measures to accomplish them, but such measures become less effective as their anchors in informal social control decline.2 This cycle has become so evident in poor communities that social scientists started using the term "underclass" to describe the new logic of poverty in America.3 Yet in kinder and gentler ways these trends have also reshaped the agenda of the middle and upper classes. The informal social control once provided by the two-parent, one-provider family in the suburbs has given way to twoworker families who must allocate most of the extra income to purchasing security in the form of gated communities, supervised child care, and battle-ready SUVs. 4 This increasing demand for security and declining informal sources of social control have resulted in an unprecedented expansion of the criminal justice system. Today, for every 100,000 adults free in the community, nearly 500 adults are in prison, well over four times the average rate for the twentieth century.5 Nearly three percent of the entire adult population, and more than a third of all young African American males, are in some form of correctional custody on any average day in the 1990s.6 Incarceration and securitization are both responses to the priority that crime risks now have for all of those who govern units of our society, including parents over their families, managers over their businesses, and elected officials over the state. It is in this sense that I have tried to use the phrase "governing through crime" to describe the peculiar influence of crime over American policy and institutions today.7 We can speak of governing through crime wherever crime becomes the chief occasion and rationale of governing several quite different axes of governance. The 3% of the American public under the custody of the criminal-justice system is quite obviously governed through crime. Their criminal conviction makes them subject to detailed scrutiny and control by the state. An even larger population is exposed to official law-enforcement activities by virtue of living with a family member who is under the custody of the criminaljustice system. Indeed, the enormous expansion of incarceration has made the criminal code an increasingly privileged grammar for describing American social ills and elevating police and prosecutors to increasingly influential positions. For certain communities, particularly minority communities in poverty, they may be the most important government officials with power over the lives of residents. If we truly consider all the ways that the problem of crime operates as the occasion and rationale for governance, we must include the millions of others who live in environments and routines shaped by fear of crime. This involves more than simply the widening of nets in our efforts to control criminal behavior. Indeed, by far the larger portion of people actively governed by crime are not criminal-law violators but persons affirmatively seeking to protect themselves and their families from crime. At yet a third level we govern through crime when crime becomes a metaphor or analogy through which we apply the same technologies and mentalities established to govern crime onto very different issues, like child welfare and education, family integrity, worker security and satisfaction, and over consumption. 8 This means that activists seeking to change conditions in any and all of these settings have real incentives to model their complaints as concerns about crime, construct themselves as victims of the willful wrongdoing of others, and invoke a prosecutorial-like response from government. Community as a new value orientation for criminal justice, the theme of this Colloquium of the California Law Review, is the flip side of the influence crime and criminal justice now has over community life and how the role of community is problematized today.' In order to see the value of this still-nascent movement it is crucial to appreciate the cost that an already well-developed practice of governing through crime is exacting on those communities. The growth of incarceration and of "target hardened" residential communities has exacerbated racial tensions and rolled back many of the gains of the civil-rights revolution.1° In poor and minority communities that experience the highest rates of incarceration, the removal of large numbers of adult males from the community threatens the formation of families and the reproduction of informal social order, and it may actually impede the ability of those communities to informally control crime.' The securitization of American cities and suburbs has contributed to a number of social problems including sprawl, traffic congestion, desertion of public spaces and institutions, and a national epidemic in childhood obesity exacerbated by the virtual imprisonment of both poor and privileged children in the name of keeping them safer. 2 These developments are welcomed by few and intended by no one. But unless it can be reversed, governing through crime seems likely to make American communities less able to achieve political will formation and representation and less able to accomplish the local sharing of knowledge and judgment that helps define communities. That leaves more and more of the task of producing and reproducing social order, once the province of community, to official state action and particularly criminal-law enforcement. One reason that governing through crime is so detrimental to American social order is rooted in the particular ways we know and act on crime today. 3 For much of the twentieth century crime was perceived as a symptom of social pathologies that required community reform. Today the dominant view characterizes crime as an expression of willful aggression or evil. The dominant theory of how to respond to crime has returned to nineteenth-century notions of simple deterrence and elimination through exclusion or execution. Likewise, the related concept of individualized justice embodied in expert judges, and supported by a panoply of normalizing professionals (psychologists, social workers, probation officers, and so on), has been rejected in favor of mandatory sentences and zero-tolerance policies. 14 Ironically, at the very time when crime is having unprecedented influence over how we govern American institutions, our theories and strategies of crime control reflect a shallow faith in technology coupled with a deep pessimism about our capacity to produce positive change in recalcitrant individuals. After more than two centuries in which the power to punish, and the prison particularly, has been a primary laboratory for progressive governmental techniques, it has come to stand for a dead end, a highsecurity warehouse with little aspiration other than secure custody and waste management. 5 Over the course of the nineteenth and twentieth centuries, the prison figured in many different narratives of justice including religious penitence, the discipline of hard labor, psychological testing, and the therapeutic community.'6 Today, however, when investment in prisons is at an all-time high, the dominant image of the prison is as a site of secure confinement where those whose dangerousness is unalterable can be securely held for many years. Juveniles, once thought to be the most amenable to treatment and normalization are today tried in adult court for serious crimes. In a number of well-publicized crimes, thirteen- and fourteen-yearold offenders have drawn multiple life sentences because of the magnitude of the harm they caused. In some states and under some circumstances, they are treated as presumptively more dangerous than older offenders.' 7 Crime offers a harsh and inflexible model of governance at a moment when other trends from globalization to lifestyle diversity and the rise of information economies, require a higher capacity to consider the context of individual action. Like cancer, crime is often a pathology so feared that harsh measures are necessary regardless of whether those measures are realistically likely to benefit the patient or how severe the collateral effects on the body. Once crime is defined as the central problem for communities, the defensive measures taken almost always drive up the cost of performing other kinds of conflict resolution. Once conflicting parties are defined as offender and victim, institutions are pushed into roles of judge, prosecutor, or police officer that rarely reflect their expertise and often exclude functional mechanisms of integration and order maintenance.

### Link – Terrorism

#### The aff’s fear of terrorism lends ideological support to government domination, necessitating totalitarian violence

Upton 4 [(John, barrister specialising in criminal law) “An authoritarian state is in the process of construction” The Guardian Feb 22] AT

The news that M15 is to increase its numbers by a thousand is merely the latest instance of David Blunkett's rampant authoritarianism. The secret state's claim that it is losing the never-ending, unprovable war against terror will play its part in the government winning a far greater prize. Across the range of his responsibilities - immigration, policing, the criminal justice system and prisons - Blunkett has either proposed or actually introduced measures whose repressive nature should shock us. That, by now, we may have become inured to them, does not take away from the fact that New Labour is trying to radically change the constitutional environment in which we live. The home secretary has, among other things, sought to remove sentencing powers from judges; weaken safeguards for those accused of criminal offences; remove the right of jury trial; criminalise asylum seekers; and form a national gendarmerie. While five of the British citizens detained at Camp Delta are to be repatriated with the possibility that they will not face criminal charges, the government continues to run its own little Guantanamo at Belmarsh prison. A number of foreign nationals suspected of having links with terrorism are being detained indefinitely and without trial. Blunkett is assembling a body of repressive legislation of a type not seen in western Europe since the second world war. There is a stock of evidence to suggest that the home secretary is pursuing a deliberate line which, if unchecked, will result in a significant constitutional shift. The source of this change does not originate with Blunkett or his New Labour predecessor, Jack Straw. Its roots are to be found in the clash between Thatcherite attitudes to criminal justice, immigration and - to a lesser extent - terror, and those integrationist values expressed in the post-1945 social democratic consensus. Blunkett has continued to build on the foundations laid by Howard, Waddington and Baker. But where the Conservative government had to wage an ideological war against still powerful enemies, New Labour is free, thanks to the Iron Lady, to pursue an agenda which expressly rejects that which has gone before - witness the abolition, at a stroke, of the 1,000-year-old office of lord chancellor. The timing of these proposals has been fortuitous for the government. Circumstances have conspired to allow Blunkett to announce policies and pass laws that would have been any Thatcherite home secretary's dream. Without a single terrorist attack taking place, or a single civilian in the UK being killed, a climate has been created so that when we are told by the home secretary that our liberties must be removed in order to ensure our freedom, we meekly accept. The fact that the government has had to derogate from its 1998 Human Rights Act obligations in order to legitimise its policy of internment at Belmarsh is proof that it is talking the language of rights without understanding its meaning. New Labour rights chatter is a devalued currency. We shouldn't wonder at this. If Blunkett's public pronouncements are examined, they reveal an obsession with authoritarian concepts. In several speeches, he has compared the situation in Britain with that of the Weimar republic, his message being that tough measures taken today will prevent even tougher ones being taken later. It would be fascinating to know whether Blunkett is familiar with the work of the infamous Weimar - and later Nazi - jurist, Carl Schmitt, whose aphorism "Sovereign is he who decides on the exception" comes closer to describing Blunkett's political practice than does all the cosy communitarian talk about social capital, partnership and mutuality in which the home secretary likes to indulge. Schmitt was the first political philosopher explicitly to speak of "the other", the enemy who must be identified not only in order to be defeated but also to sustain the coherence of the state. For Schmitt, politics was war. Blunkett's politics also appear to depend on mobilising the masses against the marginalised - those suspected of crime or terrorism, and immigrants and asylum seekers. The symptoms of the underlying structural change affecting our constitution can, most recently, be seen in the announcement that a British "FBI" is to take over the fight against serious crime from the police. Whatever the arguments for its establishment, there is also important symbolism in dismantling the functions of regional constabularies in favour of a government-controlled super-agency. A fundamentally different, authoritarian paradigm of the state is being created before our eyes. In his essay, On the Character of a Modern European State, Michael Oakeshott wrote of two modes of association known to Roman law, which may assist in mapping this constitutional metamorphosis. Societas, in its pure form, encompasses the ideal of disinterested rule-based partnership, and universitas suggests focused leadership and directed purpose. In explicit political terms, the former suggests the functioning of participative practices and the workings of democratic institutions, while the latter lays an emphasis on centralised government and teleological leadership - at whose extreme lies totalitarianism. In theory, liberal democracy rests somewhere in between these two ends of the spectrum.In Britain, which lacks a formal separation of powers, notions of reasonableness are crucial in coordinating the workings of the state. But we are no longer dealing with a reasonable government. We are dealing with one that is failing to respect traditional constitutional values of justice and balance. This government believes less in participative democracy than in governing as an exercise in domination. With each increasingly draconian proposal, the home secretary removes a constitutional safeguard or gathers more power into the executive. By placing the country on a permanent war footing against "the other", we advance rapidly towards the polarity expressed by universitas.Shouldn't this government's strident moves towards corporatist, directorial government give us pause? The time has surely come to formally delimit the powers of the different actors - government, parliament and judiciary - in the constitution. The home secretary relies on the fact that most of us are not affected by his illiberal experiments to govern by way of the exception. We remain docile in the face of his extraordinary measures against those we are encouraged to consider as outcasts. But if he is allowed to continue imposing measures unsuited to our liberal conception of the state, how long will it be before we too become "the other"?

#### Their representations of terrorism lend ideological support to mass violence

Collins and Glover 2 – John Collins, Assistant Professor of Global Studies at St. Lawrence University, and Ross Glover, Visiting Professor of Sociology at St. Lawrence University, 2002 (Collateral Language, p. 6-7)

The Real Effects of Language As any university student knows, theories about the “social con­struction” and social effects of language have become a common feature of academic scholarship. Conservative critics often argue that those who use these theories of language (e.g., deconstruc­tion) are “just” talking about language, as opposed to talking about the “real world.” The essays in this book, by contrast, begin from the premise that language matters in the most concrete, im­mediate way possible: its use, by political and military leaders, leads directly to violence in the form of war, mass murder (in­cluding genocide), the physical destruction of human commu­nities, and the devastation of the natural environment. Indeed, if the world ever witnesses a nuclear holocaust, it will probably be because leaders in more than one country have succeeded in convincing their people, through the use of political language, that the use of nuclear weapons and, if necessary, the destruction of the earth itself, is justifiable. From our perspective, then, every act of political violence—from the horrors perpetrated against Native Americans to the murder of political dissidents in the So­viet Union to the destruction of the World Trade Center, and now the bombing of Afghanistan—is intimately linked with the use of language. Partly what we are talking about here, of course, are the processes of “manufacturing consent” and shaping people’s per­ception of the world around them; people are more likely to sup­port acts of violence committed in their name if the recipients of the violence have been defined as “terrorists,” or if the violence is presented as a defense of “freedom.” Media analysts such as Noam Chomsky have written eloquently about the corrosive ef­fects that this kind of process has on the political culture of sup­posedly democratic societies. At the risk of stating the obvious, however, the most fundamental effects of violence are those that are visited upon the objects of violence; the language that shapes public opinion is the same language that burns villages, besieges entire populations, kills and maims human bodies, and leaves the ground scarred with bomb craters and littered with land mines. As George Orwell so famously illustrated in his work, acts of vio­lence can easily be made more palatable through the use of eu­phemisms such as “pacification” or, to use an example discussed in this book, “targets.” It is important to point out, however, that the need for such language derives from the simple fact that the violence itself is abhorrent. Were it not for the abstract language of “vital interests” and “surgical strikes” and the flattering lan­guage of “civilization” and ‘just” wars, we would be less likely to avert our mental gaze from the physical effects of violence.

#### Turns case

Mitchell, 05 (Andrew , Stanford U. Humanities Post-Doctoral Fellow, "Heidegger and Terrorism," [Research in Phenomenology](http://www.ingentaconnect.com/content/brill/rip;jsessionid=7macig5us3335.victoria#_blank), Volume 35, Number 1, 2005 , pp. 181-218)

Government and politics are simply further means of directing ways of life according to plan; and no one, neither terrorist nor politician, should be able to alter these carefully constructed ways of life. Ways of life are themselves effects of the plan, and the predominant way of life today is that of an all-consuming Americanism. National differences fall to the wayside. The homeland, when not completely outmoded, can only appear as commodified quaintness. All governments participate in the eradication of national differences. Insofar as Americanism represents the attempt to annihilate the "homeland," then under the aegis of the abandonment of being, all governments and forms of leadership become Americanism. The loss of national differences is accordant with the advent of terrorism, since terrorism knows no national bounds but, rather, threatens difference and boundaries as such. Terrorism is everywhere, where "everywhere" no longer refers to a collection of distinct places and locations but instead to a "here" that is the same as there, as every "there." The threat of terrorism is not international, but antinational or, to strain a Heideggerian formulation, unnational. Homeland security, insofar as it destroys the very thing that it claims to protect, is nothing opposed to terrorism, but rather the consummation of its threat. Our leaders, in their attempt to secure the world against terrorism, only serve to further drive the world towards its homogenized state. The elimination of difference in the standing-reserve along with the elimination of national differences serve to identify the threat of terrorism with the quest for security. The absence of this threat would be the absence of being, and its consummation would be the absence of being as well. Security is only needed where there is a threat. If a threat is not perceived, if one believes oneself invulnerable, then there is no need for security. Security is for those who know they can be injured, for those who can be damaged. Does America know that it can be damaged? If security requires a recognition of one's own vulnerability, then security can only be found in the acknowledgment of one's threatened condition, and this means that it can only be found in a recognition of being as threat. To be secure, there must be the threat. For this reason, all of the planned securities that attempt to abolish the threat can never achieve the security they seek. Security requires that we preserve the threat, and this means that we must act in the office of preservers. As preservers, what we are charged to preserve is not so much the present being as the concealment that inhabits it. Preserving a thing means to not challenge it forth into technological availability, to let it maintain an essential concealment. That we participate in this essencing of being does not make of it a subjective matter, for there is no isolated subject in preservation, but an opening of being. Heidegger will name this the clearing of the truth (Wahrhet) of being, and it is this clearing that Dasein preserves (bewahrt). When a thing truthfully is, when it is what it is in truth, then it is preserved. In preserving beings, Dasein participates in the truth (preservation) of being. The truth of being is being as threat, and this threat only threatens when Dasein preserves it in terror. Dasein is not innocent in the terrorization of being. On the contrary, Dasein is complicit in it. Dasein refuses to abolish terrorism. For this reason, a Heideggerian thinking of terrorism must remain skeptical of all the various measures taken to oppose terrorism, to root it out or to circumvent it. These are so many attempts to do away with what threatens, measures that are themselves in the highest degree willful. This will can only impose itself upon being, can only draw out more and more of its wrath, and this inward wrath of being maintains itself in a never-ending supply. The will can only devastate the earth. Rather than approaching the world in terms of resources to be secured, true security can only be found in the preservation of the threat of being. It is precisely when we are busy with security measures and the frantic organization of resources that we directly assault the things we would preserve. The threat of being goes unheeded when things are restlessly shuttled back and forth, harried, monitored, and surveilled. The threat of being is only preserved when things are allowed to rest. In the notes to the "Evening Conversation," security is thought in just such terms: Security (what one understands by this) arises not from securing and the measures taken for this; security resides in rest [in der Ruhe] and is itself made superfluous by this. (MA 77: 244)23 The rest in question is a rest from the economic cycling and circulating of the standing reserve. The technological unworld, the situation of total war, is precisely the era of restlessness ("The term 'totality' says nothing more; it names only the spread of the hitherto known into the 'restless"' [GA 69: 181]). Security is superfluous here, which is only to say that it is unnecessary or useless. It is not found in utility, but in the preserved state of the useless. Utility and function are precisely the dangers of a civil that has turned antagonistic towards nature. In rest, they no longer determine the being of the thing. In resting, things are free of security measures, but not for all that rendered insecure. Instead, they are preserved. There is no security; this is what we have to preserve. Heideggerian thinking is a thinking that thinks away from simple presence and absence. It thinks what Heidegger calls "the between" (das Zwischen). This between is a world of nonpresence and nonabsence. Annihilation is impossible for this world and so is security. The terror experienced today is a clue to the withdrawal of being. The world is denatured, drained of reality. Everything is threatened and the danger only ever increases. Dasein flees to a metaphysics of presence to escape the threatened world, hoping there to find security. But security cannot do away with the threat, rather it must guard it. Dasein guards the truth of being in the experience of terror. What is perhaps repugnant to consider in all this is that being calls for terrorism and for terrorists. With the enframing of being and the circulation of standing-reserve, what is has already been destroyed. Terrorism is merely the ugly confirmation of this point. As we have seen, being does not linger behind the scenes but is found in the staging itself. If being is to terrorize-if, in other words, this is an age of terrorism-then being must call for terrorists. They are simply more "slaves of the history of beyng" (GA 69: 209) and, in Heidegger's eyes, no different from the politicians of the day in service to the cause of Americanism. But someone might object, the terrorists are murderers and the politicians are not. Granting this objection despite its obvious naivety, we can nonetheless see that both politicians and terrorists are called for by the standing-reserve, the one to ensure its nonabsence, that the plan will reach everyone everywhere, and the other to ensure its nonpresence, that all beings will now be put into circulation by the threat of destruction. In this regard, "human resources" are no different from "livestock," and with this, an evil worse than death has already taken place. Human resources do not die, they perish.

### Link – Economy

#### Attempting to save the global economy from disaster is a liberal order-building method of security

Mark Neocleous, Professor of Critique of Political Economy, Brunel University, 08 (“Critique of Security”, McGill-Queen’s University, pp. 94-97, Published 2008)

But 'social security' was clearly an inadequate term for this, associated as it now was with 'soft' domestic policy issues such as old-age insurance. 'Collective security' would not do, associated as it was with the dull internationalism of Wilson on the one hand and still very much connected to the institutions of social security on the other." Only one term would do: national security. This not to imply that 'national security' was simply adopted and adapted from 'social security'. Rather, what we are dealing with here is another ideological circuit, this time between 'national security' and 'social security', in which the policies 'insuring' the security of the population are a means of securing the body politic, and vice versa;" a circuit in which, to paraphrase David Peace in the epigraph to this chapter, one can have one's teeth kicked out in the name of national security and put back in through social security. Social security and national security were woven together: the social and the national were the warp and the weft of the security fabric. The warp and the welt, that is, of a broader vision of economic security. Robert Pollard has suggested that 'the concept of "economic security'- the idea that American interests would be best sewed by an open and integrated economic system, as opposed to a large peacetime military establishment - was firmly established during the wartime period'. 71 In fact, the concept of 'economic security' became a concept of international politics in this period, but the concept itself had a longer history as the underlying idea behind social security in the 1930s, as we have seen. Economic security, in this sense, provides the important link between social and national security, becoming liberalism's strategic weapon of choice and the main policy instrument from 1945. As one State Department memo of February 1944 put it, 'the development of sound international economic relations is closely related to the problem of security. But it would also continue to be used to think about the political administration of internal order. Hence Roosevelt's comment that 'we must plan for, and help to bring about, an expanded economy which will result in more security [and so that the conditions of 1932 and the beginning of 1933 won't come back again'.' On security grounds, inside and outside were constantly folding into one another, the domestic and the foreign never quite On the fabrication of economic order properly distinguishable. The reason why lay in the kind of economic order to be secured: both domestically and internationally, 'economic security' is coda for capitalist order. Giving a lecture at Harvard University on 5 June 1947, Secretary of State George C. Marshall recalled the disruption to the European economy during the war and Europe's continuing inability to feed itself, and suggested that if the US did not help there would be serious economic, social and political deterioration which would in turn have a knock-on effect on US capital. The outcome was a joint plan submitted to the US from European states at the end of August, after much wrangling with the Soviet Union, requesting $28 billion over a four-year period (the figure was reduced when finally agreed by Congress). The European Recovery Program (ERE known as the Marshall Plan) which emerged has gone down as an economic panacea, 'saving' Europe from economic disaster. But as the first of many such 'Plans', all the way down to the recent 'reconstruction' of Iraq, it does not take much to read the original Marshall Plan through the lens of security and liberal order-building. Alan Milward has suggested that the conventional reading of the Marshall Plan and US aid tends to accept the picture of post-war Europe on the verge of collapse and with serious social and economic discontent, such that it needed to be rescued by US aid. In fact, excluding Germany, no country was actually on the verge of collapse. There were no bank crashes, very few bankruptcies and the evidence of a slow down in industrial production is unconvincing. There is also little evidence of grave distress or a general deterioration in the standard of living. By late-1946 production had roughly equalled pre-war levels in all countries except Germany. And yet Marshall Aid came about. Milward argues that the Marshall Plan was designed not to increase the rate of recovery in European countries or to prevent European economies from deteriorating, but to sustain ambitious, new, expansionary economic and social policies in Western European countries which were in fact already in full-bloom conditions. In other words, the Marshall Plan was predominantly designed for political objectives - hence conceived and rushed through by the Department of State itself." Milward's figures are compelling, and complicate the conventional picture of the Marshall Plan as simply a form of economic aid. But to distinguish reasons that are 'economic' reasons from reasons that are 'political' misses the extent to which, in terms of security, the economic and the political are entwined. This is why the Marshall Plan is so inextricably linked to the Truman Doctrine's offer of military aid and intervention beyond us borders, a new global commitment at the heart of which was the possibility of intervention in the affairs of other countries. As Joyce and Gabriel Kolko have argued the important dimension of the Truman Doctrine is revealed in the various drafts of Truman's speech before it was finally delivered on 12 March, and the private memos of the period. Members of the cabinet and other top officials understood very clearly that the united States was now defining a strategy and budget appropriate to its new global commitments, and that a far greater involvement in other countries was now pending especially on the economic level. Hence the plethora of references to 'a world-wide trend away from the system of free enterprise's which the state Department's speech-writers thought a 'grave threat' to American interests. Truman's actual speech to Congress is therefore more interesting for what it implied than what it stated explicitly. And what it implied was the politics behind the Marshall Plan: economic security as a means of maintaining political order against the threat of communism. The point then, is not just that the Marshall Plan was 'political' how could any attempt to reshape global capital be anything but political? It is fairly clear that the Marshall Plan was multidimensional, and to distinguish reasons that are 'economic' reasons from reasons that are 'political' misses the extent to which the economic, political and military are entwined The point is that it was very much a project driven by the ideology of security. The referent object of 'security here is 'economic order'. The government and the emerging national security bureaucracy saw the communist threat as economic rather than military. As Latham notes, at first glance the idea of military security within a broad context of economic containment merely appears to be one more dimension of strength within the liberal order. But in another respect the project of economic security might itself be viewed as the very force that made military security appear to be necessary. In this sense, the priority given to economic security was the driving force behind the us commitment to underwrite military security for Western Europe." The protection and expansion of capital came to be seen as the path to security, and vice versa. This created the grounds for a re-ordering of global capital involving a constellation of class and corporate forces as well as state power, undertaken in the guise of national security. NSC-68, the most significant national security document to emerge in this period, stated that the 'overall policy at the present time may be described as one designed to foster a world environment in which the American system can survive and flourish'." In this sense we can also read the International Monetary Fund (IMF) and General Agreement on Tariffs and Trade (GATT) of 1947, the Brussels Pact of March 1948 and the nascent movement towards 'European Union' as part and parcel of the security project being mapped out." The key institutions of 'international order' in this period invoked a particular vision of order with a view to reshaping global capital as a means of bringing 'security' political, social and economic - from the communist threat.

### Link – Lawfare

#### **The fear of lawfare casts protections for US citizens as terrorism – destroys legal protections and necessitates violence**

Posner 11 [ Eric, Kirkland and Ellis Professor of Law at the University of Chicago, “Dockets of War”, 2/23]

SMART BOMBS cannot take out WikiLeaks. Stealth bombers cannot eliminate the bad odor wafting around Guantánamo Bay. Unmanned drones armed with Hellfire missiles cannot stop foreign countries and NGOs from putting America “on trial” for targeted killings. Lawfare is taking over international relations—or so many people believe. The most awesome military power in the world blunders about like a helpless giant in a dark room, swarmed by hostile forces that it cannot see and cannot attack. First there’s WikiLeaks’ Julian Assange, who dealt U.S. diplomacy a serious blow when he posted thousands of cables disclosed to him by an American soldier named Bradley Manning. Yet the U.S. government is probably helpless to do anything about him. Justice Department officials investigating the possibility that Assange violated the Espionage Act worry that the law runs afoul of the First Amendment. Leakers like Manning can be prosecuted, but because few commit Manning’s blunder of bragging about their exploits, they are rarely caught. If the government could prosecute disseminators, the epidemic of leaking could be mitigated. But that’s a near impossibility. And let us not forget Gitmo. The current administration drafted an executive order governing the detention of suspected members of al-Qaeda at Guantánamo Bay in the hopes of shutting down the facility by trying or releasing the detainees held there. This goal was shattered—on the rock of legal and political reality. Under the U.S. Constitution, evidence obtained by coercive interrogation cannot be used at trial. Thus, trials of at least some of the detainees would end in acquittals even though the U.S. government knows full well that those prisoners will restart their terrorism work as soon as they are freed. The Bush administration tried to avoid constitutional difficulties by relying on military commissions, but this strategy too failed. What America is left with is indefinite detention. And this is a political mess; according to some commentators, it is also constitutionally questionable. In both cases, the legal constraint on national-security policies of the U.S. government is internal—it flows from the Constitution. But there are external legal constraints as well. Policy makers, including high-ranking military officials, have raised the alarm about the impact of international and foreign law on the American use of force. Many of America’s allies (and many influential NGOs) support treaties that set significant limits on military action, often with vague phrasing that—in theory—leaves U.S. policy makers and soldiers vulnerable to prosecution by international courts and the national courts of foreign countries. In 2001, Colonel Charles Dunlap (now major general, retired) of the U.S. Air Force famously described these legal constraints as “lawfare,” which he defined as “the use of law as a weapon of war” and “the most recent feature of 21st century combat.”1 By this reading, lawfare is both the efforts of enemy nations, terrorist organizations and their supporters to counter American military superiority by threatening U.S. policy makers and soldiers with prosecution and civil litigation, and the pressure brought to bear by NGOs who take to the media marketplace insisting that international law places sharp limits on military action. In his 2007 memoir, former–Bush administration Justice Department official Jack Goldsmith disclosed that the risks posed by lawfare alarmed officials at the highest levels, including then–Secretary of Defense Donald Rumsfeld.2 The U.S. government has already undertaken defensive measures. Targeting decisions by the U.S. Air Force are subject to legal scrutiny before planes leave the ground; in fact, a lawyer can tell a commander that attacking a particular target is illegal because doing so risks excessive civilian casualties. The U.S. government has also expended significant diplomatic resources opposing treaties and international organizations that may ensnare American military operations. At this point, there is a palpable sense that lawfare may well end up compelling U.S. armed forces to curtail operations of significant strategic importance. But the very idea of lawfare is perplexing. How can “law”—a set of rules applied by unarmed institutions like courts—stand up to bombs and missiles? The answer is that it cannot. Laws do not enforce themselves. If a weak country cannot coerce a more powerful country through force of arms, then it cannot coerce the other country with law either. The lawfare threat is greatly exaggerated. THE SUPPOSED external constraints are plentiful. Laws of armed conflict consist of a set of treaties (most famously, the Geneva Conventions) and customary norms that govern the use of force by the military, the most contentious of which is the requirement that civilian casualties not be “disproportionate” to the military target that is destroyed. Everyone understands that an army should not level a whole city in order to eliminate a handful of hidden soldiers, but no one agrees about whether an army can, for example, destroy an apartment building or even a city block in order to get rid of a few enemy combatants holed up in one apartment. The U.S. military typically uses precision-guided munitions to minimize civilian casualties, but it has received intense criticism nonetheless. When the air force bombed from high altitude to minimize the risk to pilots during the 1999 war with Serbia, this practice also decreased accuracy, so more civilians were killed than would have been if the planes had flown closer to the ground. U.S. forces also bombed dual-use infrastructure such as the building that housed the Serbian state TV station. NGOs were in an uproar. This controversy is often cited as an example of lawfare. This is unfortunate. The pressure against the United States was brought by a set of organizations—including Human Rights Watch and Amnesty International—not by America’s enemies. Indeed, the threat has been blown out of such proportion that there were even fears that NGOs and terrorists had forged a kind of alliance, united by their joint interest in curbing American power. All hysteria aside, even if this NGO-led effort is properly understood as “lawfare,” it does not suggest anything distinctive about the practice that should concern us. Countries at war have always had to contend with arguments that they act with unnecessary brutality. The German “rape of Belgium” was a propaganda coup for the British and French during World War I. Teutonic depredations also fueled the propaganda battles of World War II, but the Allies had to address similar charges after they incinerated German and Japanese cities. These indictments reflected moral, not legal, concerns. If a country can achieve legitimate military objectives without needless slaughter, then it should do so. This idea is embodied in the norm of proportionality, but the norm itself has never provided the basis for legal charges against individuals—it is simply too vague to supply a rule of decision in a court of law. MILITARY FORCES will always be criticized; there is nothing new, or wrong, about that. What is new, and what has been confused with lawfare, is the explosive rise of the NGO. In the old days, only governments of warring countries would argue that belligerents violated international law. Today, NGOs have inserted themselves into the debate, garnering press attention that influences the public, which in turn pressures governments. Many of these organizations have put mistreatment at Guantánamo Bay on the public agenda, loudly insisting that the United States has broken international law. By placing moral arguments against wartime brutality in legal terms (on the basis of aggressive interpretations of international law), they’ve managed to put the American government on the defensive. NGOs have credibility because they are not involved in the conflicts on which they report, and this in turn gives them unusual influence. And the power of NGOs to affect the debate is only increased by the latest visual props at their disposal. What used to be called the “CNN effect” and now is perhaps better dubbed the “WikiLeaks effect”—the widespread availability of photographs and videos depicting the brutalities of war—stirs up popular sentiment against U.S. militarism, both inside the United States and abroad. These images have proved immensely valuable for critics of the United States and for America’s enemies. But despite all the agitation about NGOs, this simply is not lawfare. The United States government cannot meet these challenges by bowing to international legal norms that supposedly limit military action. NGOs advance interpretations of the law, but their interpretations do not have any legal authority, nor can they make, change or enforce the law. WikiLeaks and other media do not demand legal compliance. All they do is push toward transparency and the curtailment of military operations that generate grisly images. In the end, these are political, public-relations and technological threats, not legal ones. INDEED, THE U.S. government should not cower in the face of imaginary judicial foes—whether they are borne from the pressures of NGOs or nation-states. More and more cases are brought in international and foreign courts against government officials accused of committing international crimes. Rumsfeld worried that courts in foreign countries—Spain, say, or Belgium, or Germany, or the UK—would claim jurisdiction over Bush administration officials who had authorized torture, whether in the United States or abroad. Americans as diverse as George H. W. Bush, Colin Powell, Henry Kissinger and Dick Cheney have been threatened with prosecution in countries across Europe. Philippe Sands, a prominent British lawyer, predicted that one day former Bush officials would receive a “tap on the shoulder” while on vacation in Italy or France.3 At a minimum, these people will be afraid to travel; maybe they will be captured, tried and thrown in jail. Nation-states normally do not prosecute foreigners for committing crimes in foreign countries, but an exception is made for genocide, torture, piracy and the like. If a Somali pirate finds himself in the United States, he can be prosecuted even though he is not an American, his victims were not American and the crimes took place outside American territory. This type of jurisdiction—known as “universal jurisdiction”—is controversial, but some people argue that treaties such as the UN Convention Against Torture require prosecutions based thereon. To meet these treaty obligations and to address humanitarian concerns more generally, a host of countries have enacted universal-jurisdiction laws. It is this type of law that enables an American court to put a Somali pirate on trial. And it is this same type of law that allows Belgium or the United Kingdom to try Americans for authorizing or engaging in torture. These laws have been invoked a handful of times. A Spanish magistrate judge indicted Augusto Pinochet, the Chilean dictator, and almost persuaded the UK (where Pinochet was visiting for medical treatment) to extradite him to Spain. A few Israeli officials have changed their travel plans after learning that they might be arrested in European countries. In 2009, the current Israeli opposition leader, Tzipi Livni, canceled a trip to London after an arrest warrant was issued against her for war crimes committed in Gaza. A handful of Africans involved in international crimes—like FranÇois Bazaramba, a participant in the Rwandan genocide—have been arrested and tried in Europe and the United States. And in a few countries, authorities did launch investigations of American and other foreign officials. However, it is more likely that an American would choke to death on his foie gras while snacking at a café in Paris than that he would be arrested there for committing international crimes. No American official, former official or soldier has ever been detained, arrested or tried in a foreign country for international crimes. There is a reason for this: governments do not want to offend the United States, even on behalf of humanitarian values that they claim to hold dear. Indeed, what is striking about the investigations in foreign countries is that they enjoy little support from their respective governments. In European legal systems, unlike in the United States, prosecutors are required by law to investigate legal claims brought by victims and even third parties like NGOs. Belgian authorities duly launched an investigation of General Norman Schwarzkopf after various private individuals complained about U.S. tactics in Operation Desert Storm. He was never prosecuted. Even so, after Donald Rumsfeld observed that the United States could hardly agree to locate NATO headquarters in a country where Americans were in legal jeopardy, Belgium gutted its universal-jurisdiction statute. Most other European countries have placed these kinds of prosecutions (unlike ordinary criminal trials) under tight political control. Only in Spain was there ever even quasi-official support for these universal-jurisdiction prosecutions. And still then, it soon came to an abrupt—and near comical—end. The same famous Spanish magistrate judge, Baltasar Garzón, who launched the investigation of Pinochet also launched investigations of members of the Bush administration. But the Spanish governing elite never supported Garzón, who was regarded as a loose cannon. The last straw was his decision to investigate Franco-era atrocities, which were supposed to be veiled under an amnesty provision. Now it is Garzón who is on trial for abuse of his office. The Spanish parliament has in the meantime weakened the universal-jurisdiction statute, thanks in part to behind-the-scenes pressure from the United States. THIS MISERABLE record of foreign and international prosecutions hardly justifies the alarm that we have heard about lawfare. Those in fear of lawfare make the fatal assumption that a generally written law (“torture is forbidden”) will be enforced uniformly against all who violate it. But this would mean that universal-jurisdiction laws barring torture and war crimes must be applied not only to the United States and Israel (which has been a disproportionate target of the litigation) but also to China, Russia, Indonesia, India, Brazil, Pakistan, Saudi Arabia and Iran. These countries have no desire to expose their soldiers and officials to legal jeopardy in foreign nations, which means that the only source of lawfare is a handful of militarily weak, economically dependent European countries that lack the power and interest to take on the entire world. This is why European governments have been scrambling to ensure that laws which they might have believed they were compelled to enforce because of their treaty obligations will not be used against the United States or any countries outside of Africa—with the possible exception of universally despised Israel. The same point can be made about international treaties. Many fretted about the Mine Ban Treaty, which prohibits the use, stockpiling, production and transfer of all antipersonnel mines. A technology with high tactical military value must not be proscribed. But there is a simple solution to this problem: don’t join the convention. The United States has refused to, as have other countries that rely on land mines for protection, such as Finland, which has a long border with Russia. Foreign countries cannot compel the United States to comply with a treaty that it rejects. The same goes for the International Criminal Court (ICC), which could in barely imaginable circumstances claim jurisdiction over Americans who commit war crimes on the territory of member states. The United States is not a member; it has also rejected the ICC’s authority over Americans, and it has extracted promises from numerous member states to not hand over U.S. citizens to the ICC. Meanwhile, the ICC has gotten off to a slow start. Most of its members engage in no significant military operations (the 114 countries that have ratified the treaty include Malta and Norway but not China, Russia or India). And the ICC has been assigned only a handful of cases in Africa (Uganda, the Democratic Republic of Congo, the Central African Republic, Sudan and Kenya)—where it has made slow progress (a single trial so far, marred by procedural irregularities). The ICC has no independent power. It cannot arrest anyone; it can only ask member countries to arrest people on its behalf. In Africa, many countries have made clear that they will not arrest Sudan’s President Omar Hassan al-Bashir, who was charged with war crimes and crimes against humanity in 2009 and genocide in 2010. The ICC certainly poses no threat to Americans in the foreseeable future. THE ONLY real legal constraint on U.S. officials comes from domestic law. The threat of domestic criminal liability forced the Bush administration to limit interrogations and temporarily halt its surveillance of al-Qaeda. U.S. courts also forced the Bush administration to offer procedural protections to detainees in Guantánamo Bay, which has led to some of them being released. This is not a new phenomenon: FDR’s administration faced the same constraint as it tried to circumvent neutrality laws in order to help Britain at the outset of World War II. When policy disagreements separate the executive and Congress, the legislative branch can pass laws criminalizing executive action that violates Congress’s policy preferences. Legal liability is an ever-present menace and generates anxiety among executive-branch personnel. However, jail time is vanishingly rare—as long as officials do not try to deceive Congress and then get cited for contempt, as happened after Watergate. FDR’s creative evasions of the law did not lead to trials or (as his attorney general feared) impeachment. The Iran-Contra affair of the 1980s resulted in several convictions secured by an independent counsel appointed to investigate the matter. But all the defendants escaped imprisonment—their convictions were overturned on appeal or they were pardoned. Later, the independent-counsel statute was allowed to lapse. Obama has shown no interest in prosecuting Bush administration officials for violating laws against torture and domestic surveillance. None of this should be surprising. Why would Congress enact laws that hamper counterterrorism and military efforts? It seems odd, to say the least, to claim that the United States wages lawfare against itself. Many laws reflect basic policy differences between Congress and the executive; they do not amount to lawfare in any meaningful sense. The lawfare claim, then, boils down to the fear that Congress exerts too much authority over national-security policy. This claim might be right, but casting this age-old controversy about the division of powers between the branches of government as an instance of lawfare, as though Congress were a foreign enemy, hardly contributes to this debate. Indeed, in most cases, the issue is just that old laws enacted in a different era prove unable to address modern problems; Congress amends these laws in order to bring them up-to-date—as it has in the areas of surveillance, warrants and military commissions. Much the same can be said of the U.S. judicial system. The courts may get in the way of a carte blanche White House agenda by, say, refusing to admit tainted evidence into the civilian trials of terrorists. But they have not barred military trials where such evidence may be introduced. The dismissal last December of a suit brought on behalf of Anwar al-Awlaki, a U.S. citizen located in Yemen who has been targeted by the CIA for assassination, is just the latest in a long line of cases rejecting judicial protections for terrorist suspects. The courts have insisted that the U.S. government give captured members of al-Qaeda more legal process than it was initially inclined to, but the practical consequences of these rulings have been minimal. American courts have traditionally given the executive wide latitude to fight wars; once the U.S. Supreme Court accepted the Bush administration’s argument that the conflict with al-Qaeda was a “war,” a high level of judicial deference kicked in. The executive takes the lead in formulating military policy, but Congress and the courts play a role, and so, at the margin, executive-branch officials will not be able to do whatever they want to do. That is just how our system works, with the result that the Bush administration could not obtain the surveillance authorities it sought, and the Obama administration cannot close Guantánamo Bay. MODERNITY HAS made lawfare appear to be an all-encompassing, ever-present and alarmingly new phenomenon. Thousands of WikiLeaks cables flood our inboxes while Al Jazeera plays Afghans fleeing American bombs on a loop. Technology is a double-edged sword. The same technological advances that made precision-guided weapons and improved battlefield communications possible have also made the U.S. military vulnerable to the dissemination of graphic pictures and confidential information. U.S. strategy and operations will have to adjust to these threats. But they are not legal menaces, and they can’t be addressed by hiring JAGs. WikiLeaks poses a distinctive challenge, but the problem is political, despite all the talk of the First Amendment. The courts have never explicitly barred the U.S. government from criminalizing dissemination of classified information. The real problem is that if the U.S. government goes after WikiLeaks, the precedent it sets will threaten the press. There is no obvious way to distinguish the actions of Julian Assange from those of the editor of the New York Times: both of them publish leaks. But that means a prosecution would be politically explosive; the U.S. government risks making an enemy of all the media, which it cannot afford to do. None of this is “lawfare”—certainly no more than were the first printed leaflets distributed among enemy populations in the fifteenth century. Putting aside the constraints of politics and technology, all that is left of lawfare is the trivial threat of foreign and international law. Internationalists of various stripes believe that law stands above and beyond politics. In fact, the use of law depends on power, and is enforced by those who have it against those who do not. Failure to understand this fact will lead the United States down a foolhardy path, wasting resources on unneeded JAGs and tying the military’s hands. The irony is that the hardheaded officials who run the national-security apparatus fear chimeras conjured up by the dreamiest internationalists.

### Link – I-Law

#### The affirmative orders politics around a myth that exists to make authoritarianism warm and fuzzy – instead we need to reorient ourselves towards a counter-politics resisting this state of emergency.

Mark Neocleous, Professor of the Critique of Political Economy at Brunel University, 08 (“Critique of Security”, McGill-Queen’s University, pp. 72-75, Published 2008)

But there is a wider argument to be made, one with political implications. The idea that the permanent emergency involves a suspension of the law encourages the idea that resistance must involve a 'return to legality', a return to the 'normal' mode of governing through the rule of law. This involves a serious misjudgement in which it is simply assumed that legal procedures - both international and domestic are designed to protect human rights from state violence. 'Law' are comes to appear largely unproblematic and the rule of law 'an unqualified human good'." What this amounts to is what I have elsewhere called a form of legal fetishism, in which Law becomes a mystical answer to the problems posed by power. In the process, the problems inherent in Law are ignored. Law is treated as an 'indepen- dent' or 'autonomous' reality, explained according to its own dynamics, a Subject in itself whose very existence requires that individuals and institutions 'objectify' themselves before it. This produces the illusion that Law has a life of its own, abstracting the rule of law from its origins in class domination, ignoring the ways in which the rule of law is deployed as a political strategy, and obscuring the ideological mystification of these processes in the liberal trumpeting of the rule of law. To demand the return to the 'rule of law' is to seriously misread the history of the relation between the rule of law and emergency powers and, consequently, to get sucked into a less-than-radical politics in dealing with state violence. Part of what I am suggesting is that emergency measures are part of the everyday exercise of powers, working alongside rather than against the rule of law as part of a unified political strategy in the fabrication of social order. The question to ask, then, is less 'how can we bring law to bear on violence?' and much more 'what is it that the law permits emergency measures to accomplish?"' This question - the question that Schmitt, with his fetish for the decision cannot understand/'° which is also why contemporary Left Schmittianism is such a dead loss - disposes of any supposed juxtaposition between legality and emergency and allows us to recognise instead the extent to which the concept of emergency is deeply inscribed within the law and the legal condition of the modem state, and a central part of liberalism's authoritarian moment: the iron fist in the velvet glove of liberal constitutionalism. Far from suspending law or bracketing off the juridical, emergency powers lie firmly within the legal domain. How could they not, since they are so obviously central to state power and the political technology of government - part of the deployment of law, rather than its abandonment? Once this is recognised, the supposed problematic of violence disappears completely, for it can then be seen that emergency powers are deployed for the exercise of a violence necessary for the permanent refashioning of order - the violence of law, not violence contra law. Liberalism struggles with this, and thus presents it as an exceptional moment; fascism recognises it for what it is, and aestheticises the moment. As David Dyzenhaus points out, while the stripping of liberties in the name of emergency the denial of rights on the grounds of necessity and the suspension of freedoms through the exercise of prerogative might appear quite minor compared to what happens in fascist regimes, the fact that the stripping, denial and suspension does happen under the guise of emergency and in full view of the courts brings the legal order of liberal democracies far closer to the legal order of fascism than liberals would care to admit. But in a wonderful ideological loop, the rule of law is also its own ideological obfuscation of that fact The political implications of this are enormous. For if emergency powers are part and parcel of the exercise of law and violence (that is, law as violence), and if historically they have been aimed at the oppressed - in advanced capitalist states against the proletariat and its various struggles, in reactionary regimes against genuine politicisation of the people, in colonial systems against popular mobilisation - then they need to be fought not by demanding a return to the 'normal' rule of law, but in what Benjamin calls a real state of emergency, on the grounds that only this will improve our position in the struggle against the fascism of our time. And this is a task which requires violence, not the rule of law. As Benjamin saw, the law's claim to a monopoly of violence is explained not by the intention of preserving some mythical 'legal end' such as security or normality but, rather, for 'the intention of preserving the law itself'. But violence not in the hands of the law threatens it by its mere existence outside the law. A violence exercised not by the state, but used for very different political ends. For 'if the existence of violence outside the law, as pure immediate violence, is assured, [then] this furnishes proof that revolutionary violence ... is possible'."' That this possibility of and necessity for revolutionary violence is so often omitted when emergency powers are discussed is indicative of the extent to which much of the Left has given up any talk of political violence for the far more comfortable world of the rule of law, regardless of how little the latter has achieved in just the last few years. But if the history of emergency powers tells us anything it is that the least effective response to state violence is to simply insist on the rule of law. Rather than aiming to counter state violence with a demand for legality, then, what is needed is a counter-politics: against the permanent emergency by all means, but also against the 'normality' of everyday class power and the bourgeois world of the rule of law. And since the logic of emergency is so deeply embedded in the rhetorical structure of liberalism's concept of security this means being against the politics of security. For the very posing of political questions through the trope of emergency is always already on the side of security. To grasp why, we need to now refocus our attention more specifically on security as a political technology.